

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

HERMINIO LOPEZ,

Plaintiff,

v.

CHARLOTTE REESE KENNEDY,  
et al.,

Defendants.

No. CV 08-706-PK

OPINION AND ORDER

**MOSMAN, J.,**

On October 3, 2008, Magistrate Judge Papak issued Findings and Recommendation ("F&R") (#44) in the above-captioned case recommending that defendants Stone, Kennedy, and Lawrence's Motions to Dismiss (## 14, 25, 30) be GRANTED. The F&R further recommends *sua sponte* dismissing Lopez's claims against defendant Brumfield because the court lacks subject matter jurisdiction over the case. Plaintiff filed objections to the F&R (#50).

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a *de novo* or any other standard, the factual or legal

conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Papak's recommendation, and I ADOPT the F&R (#44) as my own opinion.

IT IS SO ORDERED.

DATED this 16th day of December, 2008.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Court